

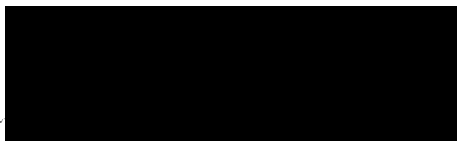
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042.
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U.S. Citizenship
and Immigration
Services

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FILE:

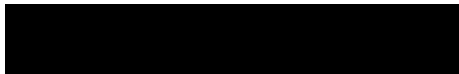


Office: CALIFORNIA SERVICE CENTER

Date: 5/24/04

IN RE:

Applicant:



APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 245A of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The termination of the applicant's temporary resident status by the Director, California Service Center is before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The director terminated the applicant's temporary resident status because the applicant failed to file the application for adjustment of status from temporary to permanent residence within the 43-month application period.

On appeal, the applicant states that he tried to file the application properly. He asks that he be given another opportunity to comply.

The status of an alien lawfully admitted for temporary residence under section 245A(a)(1) of the Act may be terminated at any time if the alien fails to file for adjustment of status from temporary to permanent resident on Form I-698 within forty-three months of the date he/she was granted status as a temporary resident under § 245a.1 of this part. 8 C.F.R. § 245a.2(u)(1)(iv).

The applicant was granted temporary resident status on February 9, 1988. The 43-month eligibility period for filing for adjustment expired on September 9, 1991. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was filed on May 7, 2001. The director therefore denied the untimely I-698 application, and subsequently terminated the applicant's temporary resident status.

Earlier in this proceeding the applicant claimed that he did not apply for adjustment in a timely fashion because he had not been properly advised of the need to do so. However, the Immigration and Naturalization Service (INS) and private voluntary organizations widely publicized the requirement of applying for adjustment to permanent residence within the requisite period. In this case, INS attempted to send a notice to the applicant as early as 1990 advising him of the requirement, although it appears the notice was returned to sender. The applicant's contention that he was not properly advised when he appeared at INS offices simply cannot be confirmed or rebutted by a review of the record.

It is noted that the original eligibility period of 31 months was extended to 43 months to better enable applicants to file timely applications. The burden to file the adjustment application in a timely manner remains with the applicant. See 8 C.F.R. § 245a.3(d).

The applicant's statements made on appeal have been considered. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirements stated above. As the applicant has not overcome the grounds for termination of status, the appeal must be dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.